

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MEDICAL RESPONSE	:	Case No. 05-CA-221233
MID-ATLANTIC, INC.	:	
	:	
<i>and</i>	:	
	:	
MOSIAH O. GRAYTON, AN INDIVIDUAL	:	

**RESPONDENT’S REPLY TO GENERAL COUNSEL’S OPPOSITION TO
RESPONDENT’S MOTION FOR LEAVE TO FILE AMENDED ANSWER**

As the Respondent in the above-captioned case, American Medical Response Mid-Atlantic, Inc. (hereafter, the “Company”) hereby respectfully replies, by and through the Undersigned Counsel, to the General Counsel’s Opposition (hereafter, the “Opposition”) to the Company’s Motion for Leave to File Amended Answer (hereafter, the “Motion”).

The General Counsel urges the Board to deny the Motion as untimely. In doing so, the General Counsel ignores the triggering event for the Motion, namely the issuance of the Board’s Decision in General Motors, Inc., 369 NLRB No. 127 (July 21, 2020). The Motion was filed in conjunction with the Company’s Motion for Reconsideration, which was timely filed in accordance with the Board’s Rules and Regulations. Accordingly, the Company’s request for leave to file an Amended Answer was hardly untimely.

The General Counsel also contends the Motion should be denied because the defenses averred by the Amended Answer were available at the hearing before Judge Amchan. In the case of the Company's defense under Section 10(b) of the Act, the General Counsel does not deny the fact the Company offered evidence during the hearing in support of the defense. Moreover, not only did the General Counsel offer evidence for the express purpose of refuting the defense, the General Counsel addressed the defense as part of his post-hearing brief to Judge Amchan. See Company's Brief in Support of Exceptions, pages 18 – 19. Accordingly, the Amended Answer merely conforms to the proof adduced before Judge Amchan.

In terms of the defense based upon the LCA, the General Counsel has never even confronted, whether through responsive argument or citation to any contrary legal authority, the Company's position the defense cannot be waived as a matter of law. See Motion for Reconsideration, pages 18 – 19. That being the case, the Company should be afforded an opportunity to aver the defense *via* the Amended Answer.

As for the Company's defense related to the Wright Line framework, the General Counsel's Opposition to the Motion for Reconsideration does not dispute the fact the case now before the Board was previously litigated under Atlantic Steel, Co., 245 NLRB 814 (1979). See Motion for Reconsideration, pages 6 – 7. Given the fact that Wright Line now applies to the case, the Company should

naturally be afforded an opportunity to raise defenses that are specifically cognizable under Wright Line.

For all the reasons set forth above, the Board should reject the arguments set forth by the Opposition, grant the Motion and provide the Company with leave to file the Amended Answer.

Dated: September 28, 2020
Glastonbury, CT

Respectfully submitted,

/s/ _____

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CERTIFICATE OF SERVICE

As an attorney duly admitted to the practice of law, I do hereby certify that,
on September 28, 2020, I served a copy of the document above on the following
via e-mail:

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Dated: September 28, 2020
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Respectfully submitted,

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